IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition No.26029 of 2004

V.Gurusamy ... Petitioner

Vs.

1.The Director General of Police,
Admirality House,
Chennai-600002.

2.The Commissioner of Police,
Chennai City,
Egmore,
Chennai-600008.

3.The Deputy Superintendent of Police,
Armed Reserve,
Egmore,
Chennai-600008.

4.The Registrar,
Tamil Nadu State Administrative Tribunal,
High Court Premises,
Chennai-600104. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 24.3.2004 made in O.A.No.9376 of 1998 by the Tamil Nadu Administrative Tribunal, Chennai-600104 and quash the same and consequently direct the respondents herein to forthwith reinstate the petitioner in service as Grade-II Police Constable together with all backwages, increments and all other attendant benefits consequent to such reinstatement.

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For petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
Mrs.A.L.Gandhimathi

For R.1 to R.3 : Mr.K.Balakrishnan, AGP

O R D E R

ELIPE DHARMA RAO, J.

The petitioner was working as Police Constable in Armed Reserve, Chennai. It was alleged that while the petitioner was working in the 'E' Division of 19th Battalion of Armed Reserve, Chennai, on 6.4.1996, the petitioner was required to escort the detenus Venkatesan and Murugan @ Kulla Murugan to the out-patient wing in Ward No.31 of the Government General Hospital and bring them back, but the petitioner with dishonest intention has taken the above said two detenus to their residences at Saidapet in an Auto bearing Registration No.TN-09-4537 and received bribe from the said detenus. On such allegation, the petitioner was placed under suspension and an enquiry was contemplated. Ultimately, he was dismissed from service. Since the Original Application filed by the petitioner was also dismissed by the Tribunal, he filed this writ petition.

2. The main core of the argument of the petitioner is that he was not furnished with the copies of the statements of important witnesses, which were relied on by the Department and that the two prisoners viz. Venkatesan and Murugan, who were said to have been taken by the petitioner to their residences at Saidapet on receipt of illegal gratification were not examined and that the two independent witnesses who were shown in the list of witnesses were also dispensed with.

3. A counter affidavit has been filed by the respondents before the Tribunal, denying the allegations made by the petitioner. It has been specifically averred therein that all the mandatory provisions under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) rules 1955 have been correctly followed in this case.

4. The learned senior counsel for the petitioner would rely on a judgment of the Honourable Apex Court in THE STATE OF PUNJAB vs. BHAGAT RAM [AIR 1974 SC 2335], wherein a Three Judge Bench of the Honourable Apex Court has held:

> "It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable

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opportunity of showing cause against the action proposed to be taken. Though the Government servant is given an opportunity to cross-examine the witness unless the statements are given to him, he will not be able to have an effective and useful cross-examination."

5. The learned senior counsel for the petitioner would further rely on another judgment of the Honourable Apex Court in STATE OF UTTAR PRADESH vs. MOHD.SHARIF (DEAD) THROUGH L.Rs. [AIR 1982 SC 937] wherein the Honourable Apex Court has held:

"Where in a departmental inquiry against Head Constable of Police for his alleged misconduct of hunting a bull in Government forest by taking advantage of his office and rank, the charge-sheet served on the delinquent did not mention the date and time of his alleged misconduct, even the location of the incident in the vast forest was not indicated with sufficient particularity, the copies of statements of witnesses recorded during preliminary inquiry were also not furnished to the delinquent at the time of disciplinary inquiry it was held that in the absence of these particulars and statements of witnesses the delinquent was prejudiced in the matter of his defence and was thus denied reasonable opportunity to defend himself at the disciplinary inquiry. The order of his dismissal was, therefore, illegal."

6. The next judgment cited by the learned senior counsel for the petitioner is KASHINATH DIKSHITA vs. UNION OF INDIA AND OTHERS [AIR 1986 SC 2118], wherein the Honourable Apex Court has held:

"Where the Govt. refused to its employee who was dismissed, the copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Govt. Failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Art.311(2) inasmuch as the employee has been denied reasonable opportunity of defending himself."

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7. The last judgment cited by the learned senior counsel for the petitioner is STATE OF U.P. vs. SHATRUGHAN LAL [(1998) 6 SCC 651], wherein the Honourable Apex Court has held:

> "Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial...." (emphasis supplied)

8. In the case on hand, as could be seen from the translated version of the charge-memo., it has been made clear to the delinquent therein that:

> "If you wish to peruse the documents proposed to be filed in the enquiry by the department to prove the charges, you may do so, with prior permission of the Sub-Inspector who would be appointed by me as Enquiry Officer, during office hours."

9. In spite of such an opportunity having been afforded to the petitioner, he never made any request to the authorities to permit him to peruse the documents proposed to be filed in the enquiry by the department to prove the charges, but, in turn, has started blaming the Department, as if the necessary documents are not furnished to him. Therefore, in the facts and circumstances of the case on hand, the respondents cannot be blamed to have denied any opportunity to the petitioner. On a perusal of the entire materials placed on record, we are able to find that the petitioner is trying to invent a cause to somehow prolong the disciplinary proceedings or to escape from the same by clinging on some technicalities. Having wantonly neglected to utilise the opportunity afforded to him by the authorities to peruse all the documents/statement being relied on by them in the departmental proceedings, probably and presumably to put-forth an argument of non-supply of necessary documents to him, the petitioner is blaming the authorities concerned as if they have not complied with the principles of natural justice and thus is trying to give a colourable picture of non-compliance of principles of natural justice.

10. At this juncture, it is but proper to mention a judgment of the Honourable Apex Court in P.D.AGRAWAL vs. STATE BANK OF INDIA [(2006) 8 SCC 776], wherein it has been held:

> "The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364] and Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its

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earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/ doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."

11. In STATE OF T.N. vs. THIRU K.V.PERUMAL [(1996) 5 SCC 474], it is held that it is for the delinquent to show the relevance of a document a copy of which he insists to be supplied to him. Prejudice caused by non-supply of document has also to be seen.

12. In yet another case reported in STATE OF U.P. vs. HARENDRA ARORA [(2001) 6 SCC 392], it has been held by the Honourable Apex Court that 'a delinquent must show the prejudice caused to him by non-supply of a copy of the document where order of punishment is challenged on that ground'.

13. In M.D., ECIL vs. B.KARUNAKAR [(1993) 4 SCC 727], the Constitutional Bench of the Honourable Apex Court has held as follows:

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."

14. Thus, on analysing various judgments of the Honourable Apex Court, it is clear that the concept of principles of natural justice varies depending on facts and circumstances of each case and definitely it is not an inelastic doctrine. In view of the subsequent judgments of the Honourable Apex Court cited above, which are aptly applicable to the facts of the case on hand, the judgments cited by the learned senior counsel for the petitioner have no application to the case on hand. As has already

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been adverted to supra, the petitioner cannot now take the stand that he is prejudiced for not supplying certain documents to him by the respondents, since he himself has evaded the opportunity afforded to him. The petitioner has argued that some of the important witnesses have not at all been examined by the Department and hence there is no corroboration. He further contended that the two prisoners were also not examined by the Department and their evidence was dispensed with. The basic principle that should be remembered in departmental proceedings is, it is not proof beyond doubt but preponderance of probability that rules the roost. It is within anybody's knowledge as to what would be the nature of evidence of the two prisoners, if they be examined as witnesses on the part of the Department and hence, in the considered opinion of this Court, the respondents have correctly dispensed with the evidence of these two prisoners. Furthermore, when the alleged charge, which is very grave in nature and shocking, is proved by all possible evidence by the respondents, after affording sufficient and reasonable opportunity to the petitioner to cross-examine the witnesses, it cannot be said that the charges are not proved, because of non-examination of some witnesses. It is not the case of the petitioner that the entire case has been cooked-up against him due to some bias. The fact that has been undoubtedly proved is that the petitioner was entrusted with the custody of the prisoners to take them to the Government Hospital but they were found roaming near their residences in Saidapet, of course, with the unstinted cooperation of the petitioner since he had taken them to their residences, and the accused persons were also found engaging themselves in extortion from the nearby shop-keepers. Thus, in the case on hand, on a perusal of the entire materials placed on record, we do not find any substantial miscarriage of justice prejudicial to the petitioner since he has not disputed the facts of the case.

15. In the case of K.L.TRIPATHI vs. STATE BANK OF INDIA [(1984) 1 SCC 43), while considering the question 'whether violation of each and every facet of principles of natural justice has the effect of vitiating the enquiry', the Honourable Apex Court has held that 'the punishment imposed cannot be said to be vitiated on account of an opportunity of cross-examination of certain witnesses not having been afforded to the delinquent' and observed thus:

> " 32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain

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explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly . This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement." (Emphasis supplied)

16. In the instant case, the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning and, therefore, in our opinion, the matter should be dealt with firmly, with firm hands and not leniently. The petitioner is charged to have lent his helping hand to hardcore criminals for some illegal gratification and the accused persons also seem to have indulged in extortion from shop-keepers in Saidapet, Chennai, upon which the matter came to the notice of the higher-ups through the Control Room. Therefore, even if there is any flaw/irregularity in the conduct of the enquiry, which has not led to failure of justice, that too when there is no denial of the facts, in the considered opinion of this Court, it will not vitiate the entire disciplinary proceedings. In the case on hand, on a perusal of the entire materials placed on record, we are unable to find any irregularity also. In such circumstances, we feel it appropriate to refer to the judgment of the Honourable Apex Court in STATE BANK OF PATIALA vs. S.K.SHARMA [(1996) 3 SCC 364] , it has been held:

"There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

"Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise. "

17. Further, in STATE OF U.P. vs. HARENDRA ARORA [(2001) 6 SCC 392], the Honourable Apex Court has held:

"Even under general law i.e. the Code of Civil Procedure, there

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are various provisions viz. Sections 99-A and 115 besides Order 21 Rule 90 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Code of Criminal Procedure also, Section 465 lays down that no finding, sentence or order passed by a competent court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the court a failure of justice has, in fact, been occasioned thereby. We do not find any reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions like Rule 55-A of the Rules in relation to disciplinary proceeding. Rule 55-A referred to above embodies in it nothing but the principles of reasonable opportunity and natural justice".

18. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor. There is nothing wrong in the respondents losing confidence or faith in such an employee, who brought only disgrace to the entire police force, by daring to join hands with hardcore criminals, at the cost of the safety of the society. Therefore, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority.

19. At this juncture, we also feel it appropriate to quote the judgment of the Honourable Apex Court in High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil, (1997) 6 SCC 339, wherein the Honourable Apex Court has observed:

"Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of corruption. Corruption, thy name is depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph nodes, cancerous cells in the human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and ramifications in the society as a whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root of corruption is nepotism and apathy in control on narrow considerations which often extend passive protection to the corrupt officers. The source and succour for acceptability of the judgment to be correct, is upright conduct, character, absolute integrity and dispassionate adjudication as hallmarks."

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The Tribunal, has considered all the facts and circumstances of the case in their proper perspective and has arrived at an irresistible conclusion to dismiss the Original Application filed by the petitioner in which, for all our above discussions and following the dicta laid down by the Honourable Apex Court in the above cited judgments, we do not see any reason to cause our interference into such a well considered and merited order passed by the Tribunal. Therefore, this Writ Petition is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Rao

To
1.The Director General of Police,
Admirality House,
Chennai-600002.

2.The Commissioner of Police,
Chennai City,
Egmore,
Chennai-600008.

3.The Deputy Superintendent of Police,
Armed Reserve,
Egmore,
Chennai-600008.

+ 1 CC To Mr.AL.Gandhimathi, Advocate SR NO.64289

W.P.No.26029 of 2004

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